

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
)	
Petition of NewPath Holdings, Inc.)	CC Docket No. 00-50
For an Expedited Declaratory)	
Ruling on the Scope of Unbundled)	
Access to the High Frequency)	
Portion of Loops)	

COMMENTS AND MOTION TO DISMISS OF SBC COMMUNICATIONS, INC.

SBC Communications Inc. (SBC) files these comments in opposition and motion to dismiss NewPath Holdings, Inc.'s (NewPath) Petition for an Expedited Declaratory Ruling on the Scope of Unbundled Access to the High-Frequency Portion of Loops. NewPath requests a declaration from the Commission that an incumbent Local Exchange Carrier's (ILEC) obligation to provide nondiscriminatory, unbundled access to the high-frequency or "data" portion of the loop under the Line Sharing Order¹ and 47 C.F.R. § 51.319(h) applies to loops on which a carrier is reselling the ILEC's analog, circuit-switched voiceband services ("resale loops").

I. NEW PATH'S REQUEST IS PROCEDURALLY INFIRM AND UNTIMELY AND SHOULD BE DISMISSED

The Line Sharing Order was published in the *Federal Register* on January 10, 2000 and became effective on February 9, 2000.² Pursuant to 47 C.F.R. § 1.106(f) and 47 C.F.R. § 1.4(b)(1), petitions for reconsideration of the Line Sharing Order were due within 30 days of its publication in the *Federal Register*.

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¹ *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order* in CC Docket 98-147 and *Fourth Report and Order* in CC Docket No. 96-98, FCC 99-355 (rel. December 9, 1999).

NewPath's petition herein is in the nature of a petition for reconsideration of the Line Sharing Order in that it essentially asks the Commission to change its holdings in Paragraphs 72 and 73 of the Line Sharing Order. NewPath's petition, however, was not filed until March 14, 2000, more than a month after the due date for petitions for reconsideration of the Line Sharing Order.³ *Ergo*, NewPath's petition is procedurally defective and untimely, and should be dismissed.

II. NEWPATH'S REQUEST IS CONTRARY TO THE EXPRESS TERMS OF THE LINE SHARING ORDER.

The Line Sharing Order in Paragraphs 72 and 73 expressly held that ILECs must only make available the high frequency portion of the loop when the ILEC is providing the retail analog voice service on that loop, and that in the event the customer terminates its incumbent LEC provided retail voice service, *for whatever reason*, the competitive data LEC is required to purchase the full stand-alone loop. [Emphasis Added]. When the customer voluntarily cancels ILEC provided retail voiceband services on the shared loop, the ILEC is no longer considered the voiceband provider on that loop.

It matters not then whether the loop is provided as part of the UNE platform or as part of total service resale. In both cases, the ILEC is no longer the retail voice provider and is not required to line share.⁴

² 65 FR 1331.

³ AT&T and MCI WORDLCOM timely filed their petitions for reconsideration of the Line Sharing Order on February 9, 2000. Their petitions also sought a "clarification" or "re-interpretation" of the express terms of the Line Sharing Order.

⁴ Of course, nothing prevents the ILEC from agreeing to a wholesale arrangement whereby "dry" loop access would be made available, should it voluntarily decide to do so, or the reseller from sharing the loop with another competitive LEC. As noted in footnote 163 of the Line Sharing Order:

III. GRANTING NEWPATH'S REQUEST WOULD INTRODUCE AN ADDITIONAL AND UNACCEPTABLE LEVEL OF COMPLEXITY INTO THE PROCESS

The Line Sharing Order expressly recognizes the complexity that would be involved in and rejected the concept of ordering more than two-carrier line sharing. Paragraph 74 succinctly states:

We agree with both incumbent and competitive LECs that the unbundling obligations should be defined to permit only a single competitor to share the line with the incumbent. The record indicates significant support for two-carrier line sharing arrangements, with an incumbent LEC providing analog, circuit-switched voice service and a competitive LEC providing data service. It is clear from the record that the complexities involved in implementing line sharing dramatically increase where more than two service providers share a single loop.

Yet, it is exactly that which NewPath is proposing in this case - i.e., more than two-carrier involvement (the ILEC, the reseller, and the data LEC). The Commission correctly recognized that even two-carrier line sharing could not be implemented overnight⁵ and, adding a third party to the process, would require additional systems development, ordering requirements, maintenance processes, and billing solutions. It would also cause additional costs to be incurred that are not presently accounted for and which would need to be recovered. Thus, NewPath's proposal is not as simple as it suggests and the Line Sharing Order properly limited unbundling to two-carrier line sharing, with the ILEC remaining as the retail voice provider on the shared line.

We do not, however, preclude incumbent carriers from providing, as an alternative, loop access on a wholesale basis. Moreover, we note that if the customer switches its voice provider from the incumbent LEC to a competitive LEC that provides voice services, the xDSL-providing competitive LEC may enter into a voluntary line sharing agreement with the voice-providing competitive LEC. Northpoint Reply Comments at 17.

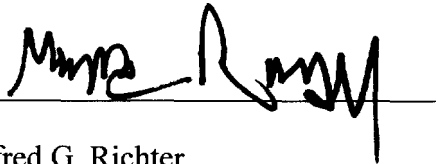
⁵ ¶¶ 130, 161.

IV. CONCLUSION

For each of these reasons, the Commission should either dismiss or deny NewPath's petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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